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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DISTRICT

In re:

Case No. 12-25966-A-13J
Chapter 7

URSULA FILICE,

OPPOSITION TO TRUSTEE'S OBJECTION
TO DEBTOR'S HOMESTEAD EXEMPTION

Debtor.

Judge McManus

Date: December 3, 2012
Time: 10:00 a.m.

The trustee did not file a timely motion to objection to the homestead exemption, since the last actual meeting of creditors was August 24, 2012. If the Court reaches the substance of the motion, the Debtor in this case qualifies for a homestead exemption of \$100,000.

The last 341 meeting of creditors held in this case was on August 24, 2012. Fran Rothwell, of John Roberts' office, presided. At that time the meeting of creditors was concluded, however Ms. Rothwell asked for some follow-up documentation. The date of September 14 at 7:45 a.m. was stated not to be a 341 meeting of creditors, but just a control date to see if the documents had been received. (The documents were timely provided.)

A trustee's motion objecting to exemptions must be filed within 30 days after

1 conclusion of the 341 meeting. The motion to object to the Debtor's exemptions was not filed
 2 until October 4, 2012, more than 30 days after the August 24, 2012, meeting. There was no
 3 September 14 meeting of creditors. Accordingly, this motion is not timely and should be
 4 denied.

5 If the Court reaches the substance of the motion, California Code of Civil Procedure,
 6 Section 704.730, provides the amount of the homestead exemption is as follows:

7 704.730. (a) The amount of the homestead exemption is one of the following:

8 (1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or
 9 spouse of the judgment debtor who resides in the homestead is a person
 described in paragraph (2) or (3).

10 (2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse
 11 of the judgment debtor who resides in the homestead is at the time of the
 12 attempted sale of the homestead a member of a family unit, and there is at
 13 least one member of the family unit who owns no interest in the homestead or
 whose only interest in the homestead is a community property interest with the
 judgment debtor.

14 (3) One hundred seventy-five thousand dollars (\$175,000) if the judgment
 15 debtor or spouse of the judgment debtor who resides in the homestead is at
 the time of the attempted sale of the homestead any one of the following:

16 (A) A person 65 years of age or older.

17 (B) A person physically or mentally disabled who as a result of that disability
 18 is unable to engage in substantial gainful employment. There is a rebuttable
 19 presumption affecting the burden of proof that a person receiving disability
 insurance benefit payments under Title II or supplemental security income
 payments under Title XVI of the federal Social Security Act satisfies the
 requirements of this paragraph as to his or her inability to engage in substantial
 gainful employment.

20 A "family unit" is defined in Code of Civil Procedure Section 704.710(b) as follows:

21 (b) "Family unit" means any of the following:

22 (1) The judgment debtor and the judgment debtor's spouse if the spouses
 23 reside together in the homestead.

24 (2) The judgment debtor and at least one of the following persons who the
 judgment debtor cares for or maintains in the homestead:

25 (A) The minor child or minor grandchild of the judgment debtor or the judgment
 26 debtor's spouse or the minor child or grandchild of a deceased spouse or
 former spouse.

1 (B) The minor brother or sister of the judgment debtor or judgment debtor's
2 spouse or the minor child of a deceased brother or sister of either spouse.

3 (C) The father, mother, grandfather, or grandmother of the judgment debtor or
4 the judgment debtor's spouse or the father, mother, grandfather, or
5 grandmother of a deceased spouse.

6 (D) An unmarried relative described in this paragraph who has attained the age
7 of majority and is unable to take care of or support himself or herself.

8 (3) The judgment debtor's spouse and at least one of the persons listed in
9 paragraph (2) who the judgment debtor's spouse cares for or maintains in the
10 homestead.

11 Here, the Debtor qualifies for the \$100,000 exemption under subdivision (2).

12 The Debtor, Ursula Filice, and her husband Gerald Filice reside at the homestead with
13 their 25-year old son, Dorian Filice. Ursula and Gerald each own an undivided 50% interest
14 in the homestead (4040 Rontree Lane, Somerset, California) as their community property.
15 Dorian has no interest in the homestead.

16 The Debtor and her husband form a 'family unit' under Section 704.710(B)(1) since
17 they reside together in the homestead. Since their only interest in the homestead is a
18 community property interest, the Debtor qualifies for the \$100,000 exemption under Section
19 704.730(a)(2). (Dorian has no interest in the homestead, and this is an additional qualifying
20 factor for this exemption, though unnecessary since the debtor and her husband qualify.)

21 The Debtor requests that the motion be denied as untimely, and alternatively that a
22 \$100,000 homestead exemption be found.

23 Date: November 19, 2012

FILICE LAW OFFICES

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25 _____
26 GERALD W. FILICE
Attorneys for URSULA FILICE

PROOF OF SERVICE BY ATTORNEY

I, Gerald W. Filice, certify as follows:

I am an active member of the State Bar of California, and my address is 1337 Howe Avenue, Suite 250, Sacramento, California 95825. On the date and at the location set forth below, I served the following documents:

OPPOSITION TO TRUSTEE'S OBJECTION TO DEBTOR'S HOMESTEAD EXEMPTION,
DECLARATION OF GERALD W. FILICE,

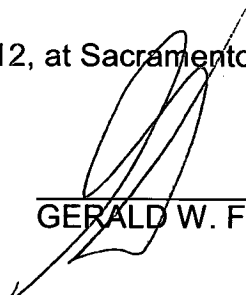
by mail, in a sealed envelope, first class postage prepaid, addressed to each of the parties below as follows:

John Roberts, Trustee
P.O. Box 1506
Placerville, CA 95667

US Trustee
501 I Street, Room 7-500
Sacramento, CA 95814

CitiMortgage, Inc.
P.O. Box 6030
Sioux Falls, SD 57117-6030

Executed on November 19, 2012, at Sacramento, California.



GERALD W. FILICE